

BEFORE THE PALMERSTON NORTH CITY COUNCIL

UNDER the Resource Management Act 1991
("the Act")

IN THE MATTER OF **Palmerston North City Council's
Proposed Plan Change: G
Aokautere Growth Area**

**to the Palmerston North City
Council**

Operative District Plan

**Heritage Estates 2000 Limited
("HEL")**

The Submitter

LEGAL SUBMISSIONS FOR HERITAGE ESTATES 2000 LIMITED

6 December 2023

MAY IT PLEASE THE PANEL:

[1] I apologise to the Panel that I cannot appear in person. I have Environment Court and private commitments that prevent me from attending this hearing. I also note that I had an Environment Court hearing in the week commencing 27 November 2023 in Taranaki, and my firm instructions to prepare submissions for this hearing came in the week commencing 27 November 2023. While I have been copied into various emails in recent times these submissions represent my substantive work on the matter.

[2] I have arranged for my learned friend Mr Dobson, a Palmerston North based lawyer, to present these submissions. I can answer further questions related to resource management law issues that may arise over AVL by arrangement through Mr Dobson if required.

[3] I have had extensive experience with strategic planning in Palmerston North for over 30 years and have a good understanding of the District Plan's evolution. I am also familiar with Palmerston North's demographics and natural and physical resources, which assist me in addressing the law with good information about the City context.¹

[4] HEL's primary relief is that PC(G) be declined, and these submissions support that request because even with the intolerably late notice of more adjustments to the text of PC (G),² the problems with the conceptual thrust of the plan change and the sufficiency of the regulatory impact analysis remain. They are too deep to be solved by mere adjustments.

¹ I retain a residence in Palmerston North and continue to undertake work there but am now mainly resident in Auckland and Wellington.

² Received from Ms Figlioli at after 6pm, Friday, 1 December 2023

[5] The Council informed the public³ and the Environment Court⁴ that Plan Change G (PC(G)) was a localised growth area at Aokautere with effects confined to the land area depicted by the proposed Aokautere Structure Plan. However, PC(G), as notified, was implementing amended or new City-wide goals that affect all future growth areas outside Aokautere, including the HEL's land interests elsewhere. Reflecting this genesis, the Council touted to Mr Farquhar the PC (G) framework as a new template for urban strategic planning to be applied to new growth nodes identified in Council-approved growth strategies. PC(G)'s underlying planning concepts are, therefore, of special interest to all stakeholders, including Mr Farquhar, involved in land development. That interest is not diminished by attempts by the Council later to narrow its lens for PC(G) to Aokautere by removing changes to City-wide objectives. There is nothing exceptional about Aokautere that warrants the new planning direction behind PC (G), and hence, approving that new direction will set the new normal for urban growth planning. Further, by removing those City-wide components, the Council removed the broader planning objectives that sustained the planning rationale for the change in the original regulatory analysis RMA Part 5.

[6] I have not been involved in HEL's evidence preparation. I have not examined the minutiae of all the expert materials for P C (G), although that is not a deficit because the opposition of Heritage Estates 2000 Limited (*HEL*) is with its overall planning thrust.

[7] I have reviewed the planning provisions and maps in the s 42A report as the most recent statement of the Council's preferred outcome, as well as the late adjustments to the structure plan and District Plan text, received on 1 December 2023. I have reviewed the planning evidence and Planning JWS to understand the broad nature of the planning contest. I particularly note Mr Thomas' planning evidence. I acknowledge Mr Thomas' extensive national development experience.

[8] The core issues that HEL raises with PC (G) are the following:

³ PNCC Website link to Plan Change G Aokautere Growth Area
<https://www.pncc.govt.nz/Council/Official-documents/District-Plan/Proposed-Plan-Change-G>
"This proposed plan change will guide future growth and urban development in Aokautere." Also see
<https://www.pncc.govt.nz/Participate-Palmy/Have-your-say/Aokautere-urban-growth>

⁴ [2022] NZEnvC 214 Palmerston North City Council, paragraphs [2] and [3] also refer to Section 42A Anita Copplestone, Section 2.7.2, paragraph 84, pages 21 to 23

- (a) The structure planning the Council promotes is exercised at a granular level to be implemented in a directive manner that unduly constrains landowner choice and undermines healthy land development market conditions. It has, therefore, crossed the line from appropriate strategic planning to enable urban capacity to command and control planning at odds with the well-known philosophical roots of the RMA.
- (b) The structure plan has not been developed with supporting technical information to a level appropriate to a private plan change incorporating master plans. The consequence is that not only is the landowner's choice constrained, but the private landowner carries the cost of error and inflexibility from this lack of in-depth assessment. This is the classic risk of imposing social and economic externalities from third-party decision-making by over-regulation. Planning practice must always ensure these externalities are minimised, or planning itself becomes the source of inappropriate economic and social costs or externalities.

[9] HEL does not have any expert economic evidence⁵; however, the precepts of liberal economics and the power of markets to provide social and economic well-being hardly need justification and should be part of the substrate of contemporary urban planning.

[10] The thesis of these submissions is that the risk of externalities inevitably arises from undue regulation and is exacerbated by long-term predictions. That thesis has its roots in the work of the New Zealand Productivity Commission on urban planning regulation.⁶

[11] An expert is not needed to state these obvious points, and the literature about the importance of flexibility to allow markets to operate efficiently is extensive.⁷ Further, the Panel has before it people like John Farquhar who can tell

⁵ There was also not time available to coordinate this with other submitters.

⁶ New Zealand Productivity Commission (2017) Better urban planning: Final report Date: February 2017. <https://www.productivity.govt.nz/assets/Documents/0a784a22e2/Final-report.pdf>

⁷ Examples are ; Peter Nunns (2021) The causes and economic consequences of rising regional housing prices in New Zealand, New Zealand Economic Papers, 55:1, 66-104, DOI:

you as experienced developers why the ability to operate flexibly in response to market forces is essential to ensure housing supply meets demand. These people are a resource for the Panel to comprehend the points made in these submissions and major actors in the housing market in Palmerston North for decades.

[12] Aokautere comprises an interesting and complex pattern of marine uplift terraces and incised gullies at the foot of the Tararua range that make intensive development challenging. It is also costly to service relative to yields, although this has been ameliorated somewhat by the increased value of developed land.

[13] Aokautere lacks landscape features of the type addressed in Part 2, s 6 that warrant detailed landscape management or protection by plan methods, although I acknowledge some of its features should be identified and managed through well-crafted policy and matters of assessment that are implemented through discretions to be applied to specific development proposals brought forward by developers. That is true not because of their landscape merit alone but because these operate in combination with other factors, such as the existing hydrological function of the gullies.

[14] Plan Change G does the following positive things:

- (a) Recognises the values of the gullies as natural systems with potential for revegetation and wider crucial city-wide stormwater function.
- (b) Identifies the major transport requirements to ensure connectivity, especially linking developments between major landowners.

[15] These matters can be implemented through policy, assessment criteria, and methods using the planning framework applied in the last 20 years, as described below. Equally, if preferred, the option of designations is available for major transport alignment, and the threshold of 'reasonable necessity' must be met for such limitations on private property rights.

[16] The Council's first attempt at zoning in Aokautere preceded my time in Palmerston North and was called Variation 15. Its operation was first seen in the suburb of Summerhill, the closest part of Aokautere to Palmerston North. Using LUC maps to judge developable land, the Council confidently assumed that its mapping was sufficient to address effects. It made residential land development on developable land a controlled activity with limited controls on site-specific assessment. That approach was later recognised as too liberal and created issues in administration to achieve good outcomes.

[17] In Palmerston North, the planning technique that has been used between 2000 and 2020 for rezoning land to increase urban development capacity and avoid the errors of the past is to do the following in combination:

- (a) Rezoning the land to residential or industrial.
- (b) Provide an indicative Structure Plan map with some basic components, including the indicative alignment of major roads and potential neighbourhood centres supported by policies and assessment criteria that identify the ultimate planning goals for providing appropriate infrastructure and local facilities.
- (c) A restricted discretionary activity rule that has sufficient matters of restricted discretion to address all matters to be assessed as part of the development process. Importantly, the restricted discretionary classification provided the ultimate power to decline consent if any development proposal insufficiently responded to the relevant policy platform and assessment criteria given added substance by an indicative structure plan map. It also provided sufficient scope for requiring services appropriate for the wider catchment following the Supreme Court decision in *Waitakere City Council v Estate Homes Ltd*.⁸ There is typically also a rule cascade reflecting minimum residential or industrial standards. In the latter, that may address factors to support a particular type of industrial

⁸ *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112

development or to support the strategic function of other zones by activity controls.

[18] Published engineering standards govern development engineering implemented progressively as development proposals emerge in response to market conditions.

[19] These techniques evolved and were applied in varying degrees appropriate to the circumstances of all new greenfield development. That approach was applied, for example, to greenfield development in Aokautere, Whakarongo, Centennial Drive and other urban extensions under Plan Change 15 and informed the planning framework for the North East Industrial Zone.

[20] That bundle of planning and local government methods has effectively promoted development and a well-functioning urban fabric in Palmerston North. These measures were sufficient to achieve the District Plan City-wide goals. They operated more or less without friction, although that depended somewhat on the personalities and relationships of those involved. Nothing has gone seriously awry.

[21] PC (G) is a planning solution looking to find a credible planning problem.

[22] The historical approach (what I call a lighter regulatory touch in a comparative sense to PC (G)) is also the most appropriate because a local authority should operate on the basis that it is necessary to ensure public goods, such as transport connectivity for multiple modalities and sufficient provision for local shopping, are achieved while leaving the developer with considerable flexibility about how to design the development ultimately to meet private needs. The in-built flexibility allows the developer to choose how to maximise yield and meet the market using efficient, detailed engineering design appropriate to that development.

[23] The developer usually provides the trunk services necessary to support the development, including any oversizing (by agreement or conditions) required to accommodate upstream demand.

[24] I am unaware of any examples of master planning (the granular design of urban form and housing typologies in a directive planning framework) as part of a council-promoted plan change in Palmerston North.

[25] My experience is that master plans are embedded in private plan changes. These are investigated and promoted by developers with a high confidence level about the scale and type of development appropriate to an area for meeting market requirements. It is pursued because it is a more profitable option than a 'wait and see' incremental approach. Master planning is often seen in high-growth markets where the projections supporting implementation are needed long term.

[26] These initiatives manifest the needs of the market participants that are then embedded in the planning process. That is made possible by the changes introduced by the RMA that removed strategic planning as the sole province of local authorities. Recognition of central governments view that these initiatives are valuable is underscored by the NPS-UD, which requires territorial authorities to be responsive to those initiatives.

[27] Master planning through plan changes by developers aims to provide confidence that a particular design will have a strategic planning imprimatur and, therefore, secure a smooth pathway through the consenting process because the overall concept has been tested and proven through the RMA, Schedule 1 process. That often results in friendly activity classifications for development that implements the master plan.

[28] Master planning by a council in a directive form becomes command and control and constitutes an unreasonable imposition on private property rights, even if they are promoted to pursue the Council's conception of the common good.

[29] The Council's experts no doubt sincerely hold their views about the desirability of the urban outcomes aimed at PC(G). However, even if Council experts believe they are right about the feasibility of particular urban solutions or their desirability, the fact is that they are third parties in the land development market who do not bear the economic and social consequences for their opinions once the plan change is made. Nor do they carry the social and economic impacts if assumptions are not validated or overtaken by events. The community often bears errors or misjudgements of unintended consequences of excessive regulation through higher costs and the landowner's reduced options. The market environment remains the governing reality that planning must work with, not against, to deliver social and private goods.

[30] Nothing in the RMA suggests it is appropriate or reasonable to impose the level of control on land assigned for urban development, as shown in PC(G). The concept of spatial planning does not require it.

[31] In the context of Palmerston North, command and control planning seems particularly inapt.

[32] The most up-to-date statement of the requirements for urban development enablement are those found in the NPS-UD, and it is instructive to look at the headline objectives and policies in Part 2 of that national direction.

[33] Set out below are Objectives 1 to 4, reflecting the key goals for improving urban development delivery.

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural well-being and their health and safety, now and into the future.

Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.

Objective 3: Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) the area is in or near a centre zone or other area with many employment opportunities
- (b) the area is well-serviced by existing or planned public transport
- (c) there is a high demand for housing or business land in the area relative to other areas within the urban environment.

Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the

diverse and changing needs of people, communities, and future generations.

[34] There is no evidence that Objective 1 cannot be achieved by the usual structure planning and rezoning approach used for the last 20 years in Palmerston North. The past has proven that.

[35] It is noteworthy that the concept of well-functioning urban environments does not support over-design by Councils and is largely concerned with ensuring adequate supply and networks while increasing the supply of developable land. Hence, the term should not be read as fundamentally antagonistic to classical liberal economics, which favours planning enablement of supply, not command and control. The national MDRS programme for Tier 1 authorities exemplifies this, where Parliament (in a bi-partisan amendment to the RMA) effectively directed the alteration of the urban landscape in Tier 1 (except for qualifying matters) by enabling greater development opportunities irrespective of well-known urban design critiques to the Select Committee on the 2020 amendments to the RMA emanating from the same consultancy advising the Council on urban design. It is this increase in supply allowing market forces to operate that underpins much of the housing initiatives of the Labour Government in the last six years as the pre-eminent social good. These initiatives were a very public rejection of excessive emphasis on expert disciplines, such as urban design, in favour of market flexibility, and that will not change any time soon.

[36] Objective 2 is important for decision-making on PC(G) because it seeks to ensure that the approach to rezoning and planning improves competitive land development markets. Applying the Council's traditional approach and, thus, a lighter regulatory touch is the best way to improve housing affordability and ensure a competitive land development market.

[37] Objective 3 is more relevant to areas closer to the centre of Palmerston North. I understand the City is proposing to rezone land to enable intensification around the town centre, which makes good sense. I regard the intensification proposals in PC (G) for Aokautere as fanciful but would acknowledge that enabling more flexibility for multi-unit development is worthwhile, although less important than doing so in central Palmerston North.

[38] Objective 4 reiterates the importance of enabling flexible land development in response to people's diverse and changing needs. That underscores Objective 2 about supporting competitive land and development markets through flexibility.

[39] Therefore, P C(G) is against contemporary views about the importance of markets and providing housing supply and imposes significant potential externalities through excessive regulation. The problem is not enough attention has been paid to increasing the supply of developable land so that Palmerston North's past reasonably affordable housing profile for families has been compromised, and that failure cannot be remedied by command and control planning.

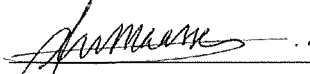
[40] The other side of the coin to the enterprise by the Council to master plan private land is that the Council should, if it promotes that approach (which is unjustified for the reasons already given), keep to the same standards of information that are expected for master planning in private plan change instruments because, essentially, they constrain decision-making to deliver the Council's desired housing product.

[41] Sufficient and defensible evidence of feasibility and market demand in the short term should be demanded of the Council that the inherent risk of externalities from long-term projections be removed. I understand that expert evidence is before the Panel from HEL to demonstrate that the technical information used by the Council is defective. The planning is inherently long-term based on Palmerston North's very moderate growth projections, and hence, the demand analysis is unreliable. All of that adds to the risk of externalities beyond those arising from the inherent inflexibility of the Council's scheme.

[42] The closing submission, then, is to urge the Panel members to individually and collectively critically examine the wisdom and appropriateness of this plan change and the sufficiency of the RMA's 32 regulatory impact analysis in light of the broad legal canvas set out in these submissions supported by planning evidence from the opposing planners.

[43] Some PC(G) concepts may be worthwhile and appropriate but can be adequately addressed in policy and discretions using the traditional strategic planning approach. It is submitted the methods are misconceived and do not meet

the requirements of the RMA. The pursuit of PC(G) is not a new horizon of enlightened urban planning, but local government over-reach that will not serve the overarching purpose of the RMA and will not implement NPS-UD.



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